

121 FERC ¶ 61,299  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 27, 2007

In Reply Refer To:  
Texas Eastern Transmission, LP  
Docket No. RP08-73-000

Texas Eastern Transmission, LP  
P.O. Box 1642  
Houston, Texas 77251-1642

Attention: Marcy F. Collins, Associate General Counsel

Dear Mr. McCallum:

1. On November 27, 2007, and pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.207 (2007)), Texas Eastern Transmission, LP (Texas Eastern) filed a petition for a waiver of the capacity release mechanism set forth in section 3.14 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Seventh Revised Volume No. 1. As discussed below, the Commission grants waiver of this tariff provision.
2. Public notice of the filing was issued on December 3, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Entergy Gulf States, Inc. (Entergy) filed Comments in support of Texas Eastern's proposal. No adverse comments or protests were filed.
3. Texas Eastern states that Entergy has received authorization from the Commission under sections 203, 204 and 305(a) of the Federal Power Act (FPA) to implement a jurisdictional separation plan (JSP) on behalf of itself, Entergy Gulf States Louisiana,

L.L.C. (EGS-LA), and Entergy Texas, Inc. (ETI).<sup>1</sup> Texas Eastern states that as part of the JSP, Entergy will be restructured into two separate utilities, EGS-LA and ETI. Texas Eastern states that after the restructuring, EGS-LA will serve Entergy's current retail customers in Louisiana, and Entergy's wholesale power customers for the duration of the existing contracts. Texas Eastern further states that ETI will serve Entergy's retail customers in Texas. Texas Eastern states that, with the exception of coal-fired generating facilities, the JSP provides that EGS-LA will own Entergy's generating facilities located in Louisiana, and ETI will own Entergy's generating facilities located in Texas. Texas Eastern states that Entergy will not proceed with the JSP unless it obtains reasonable assurances from the credit rating agencies that the JSP will not cause a downgrade such that upon completion of the JSP, EGS-LA's and ETI's credit ratings would be at least equal to Entergy's credit ratings prior to the separation. Texas Eastern states that Entergy anticipates closing the JSP transaction on December 31, 2007. Texas Eastern contends that, given the credit rating condition to close the JSP, this request does not raise creditworthiness issues for Texas Eastern.

4. Texas Eastern requests a waiver of its capacity release mechanism, set forth in section 3.14 of its GT&C, to enable Entergy permanently to assign the firm capacity rights under two firm discounted backhaul service agreements with Texas Eastern (Service Agreements)<sup>2</sup> to ETI. Texas Eastern states that EGS-LA and ETI will be formed on December 31, 2007, as the result of the JSP authorized by the Commission earlier this year, and that under the JSP, EGS-LA and ETI will succeed to all of Entergy's assets and business to be divided along state lines (with the exception of coal fired plants located in Louisiana that will be co-owned by the two entities). Texas Eastern adds that, significantly, ETI will succeed to the assets currently served by the two existing Texas Eastern Service Agreements.

5. Texas Eastern states that the literal wording of Article VII of its Service Agreements, which addresses assignments of service agreements in certain circumstances, does not cover the allocation of all Entergy assets between the two new affiliated entities. Texas Eastern contends that as a result, absent a waiver of the capacity release requirements in the tariff, Entergy would be required to release its capacity pursuant to section 3.14 of the GT&C. Given these circumstances, Texas Eastern is agreeable to an assignment of the two Service Agreements by Entergy to ETI, the entity that will own Entergy's generating facilities located in Texas and will serve Entergy's

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<sup>1</sup> Texas Eastern cites *Entergy Gulf States Inc.*, 120 FERC ¶ 61,709 (2007) and *Entery Gulf States Inc.* 121 FERC ¶ 62,088 (2007). Texas Eastern states that the JSP will be effected as a merger in accordance with Article 1.02.A(18)(a) and Article 5.01 of the Texas Business Corporation Act and section 1359 of the Louisiana Limited Liability Company law R.S. 12:1301 *et seq.*

<sup>2</sup> Texas Eastern cites Contract Nos. 910620 and 910621.

retail customers in Texas. Moreover, Texas Eastern states it is willing to request a waiver of the Commission's capacity release mechanism for other similarly situated shippers in the future. Texas Eastern states that the granting of the waiver to facilitate Entergy's corporate restructuring is consistent with Commission policy and precedent.<sup>3</sup>

6. Texas Eastern states that to facilitate the transaction, it proposes to set up EGS-LA and ETI in its LINK System in December and, following the issuance of a waiver of its capacity release mechanism and the effective date of the Commission-approved JSP, Entergy's assignment to ETI of the two Texas Eastern Service Agreements providing for firm capacity transportation will be legally effectuated. Texas Eastern will then reflect the assignment of the two Service Agreements from Entergy to ETI in its LINK System and for billing and invoicing in the month of January.

7. Texas Eastern asserts that the Commission has approved the JSP in this case, finding it to be consistent with the public interest. Texas Eastern contends that the Commission should likewise approve a waiver of section 3.14 of Texas Eastern's GT&C so that the assignment of the two Service Agreements as described herein can occur in order to facilitate the transition of the Commission-approved JSP on December 31, 2007. Texas Eastern states that granting such a waiver will ensure that there is no lapse in service to Entergy's gas-fired generating plants that will then be owned by ETI as a result of the JSP and used to serve retail customers in Texas.

8. The Commission finds that the waiver of GT&C section 3.14 is in the public interest, and consistent with Commission precedent. The Commission permits the assignment of capacity outside the capacity release provisions of the tariff in circumstances where, after the shipper obtains the capacity, a corporate reorganization results in the transfer of the function for which the capacity was obtained to another company within the same corporate family.<sup>4</sup> The Commission finds that Texas Eastern's proposal is consistent with this precedent because it merely reflects the internal reorganization of the customer and does not change the ultimate control of the capacity.

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<sup>3</sup> Texas Eastern cites *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007), in which the Commission approved temporary waivers of certain regulations and policies to allow parties to complete contractual assignment process in an orderly and efficient manner.

<sup>4</sup> *CenterPoint Energy – Mississippi River Transmission Corporation*, 115 FERC ¶ 61,013 P 5-7 (2006); *Gulfstream Natural Gas System, L.L.C.*, 111 FERC ¶ 61,330 (2005); *Southeast Supply Header, L.L.C.*, 119 FERC ¶ 61,153, at P 59 (2007).

Accordingly, waiver is granted so that the assignment of the two Service Agreements can occur pursuant to the Commission-approved JSP on December 31, 2007.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties